

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

No: 1:23-cv-00108-LMB-JFA

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT GOOGLE LLC'S MOTION TO SEAL**

Pursuant to Local Civil Rule 5, Defendant Google LLC (“Google”), through its undersigned counsel, hereby respectfully submits the instant memorandum of law in support of its motion to seal portions of its Opposition to the United States’ Motion for Partial Judgment on the Pleadings or, in the Alternative, a Protective Order, and certain exhibits referenced therein (Docket no. 370). These exhibits and the redactions in the brief contain information designated by Plaintiff the United States and third-party News Corp as confidential or highly confidential under the parties’ protective order (Dkt. 203 ¶ 20). The exhibits and the unredacted brief have been filed electronically using the sealed filing events at Docket no. 369, the redacted brief and public versions of the exhibits are filed at Docket no. 368.

INTRODUCTION

Google’s Opposition references, among other exhibits: (i) documents produced by the United States as part of its investigative file and during the course of discovery in this matter and designated by the United States and third-party News Corp as confidential or highly confidential; and (ii) transcripts of depositions of Federal Agency Advertiser (“FAA”) employees designated

by the United States as highly confidential. Pursuant to paragraph 20 of the Protective Order (Dkt. 203), through this motion Google informs the Court of the confidentiality designations of these materials and requests that the Court seal these exhibits from the public docket, and maintain the redacted brief on the public docket, in order to provide Plaintiff and third-party New Corp sufficient time to provide the Court with support for the need to seal these documents. But for the requirements of the Protective Order, Google would not seek to seal these documents.

ARGUMENT

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption in favor of public access can be overcome only by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

Google does not believe the information referenced in its memorandum or the exhibits cited therein is of a type that outweighs the presumption in favor of public access. Nonetheless, because the material was designated as confidential or highly confidential by the United States or News Corp, a non-party to this case, Google has filed the present motion in accordance with its

obligations under paragraph 20 of the Protective Order. As stated in the notice filed concurrently with this memorandum, any interested member of the public and any other party may indicate their position on the motion.

CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court seal Docket no. 369 and permit the redacted version of Google's brief and public versions of the exhibits to remain on the public docket at Docket no. 368.

Dated: August 31, 2023

Respectfully submitted,

/s/ Craig C. Reilly

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